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MAR 26 1992

Federal Communications Commission
Office of the Secretary

March 26, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: ASF Broadcasting Corp.
BPH-911230MB
Channel 280A

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FM EXAMINER

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Federal Communications Commission
Office of the Secretary

In Re Application of:)
ASF BROADCASTING CORP.)
Application for Construction)
Permit for a new FM station,)
Channel 280A, Westerville,)
Ohio)

File No. BPH-911230MB

TO: Chief, Audio Services
Division

PETITION TO DENY AND DISMISS THE APPLICATION
OF ASF BROADCASTING CORP.

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 73.3584(a) of the Commission's Rules, hereby submits this petition to deny and dismiss the application of ASF Broadcasting Corp. ("ASF"). This petition is timely filed pursuant to Public Notice, Report No. NA-156, released February 21, 1992, establishing a deadline of March 26, 1992, to file petitions to deny in this proceeding. ORA requests that the application of ASF be denied and dismissed because its proposed tower site is short-spaced to an existing station and because there are other qualified applicants in this proceeding with fully-spaced and technically suitable tower sites. In support of its petition, ORA submits the following comments.

ASF concedes, at Section V-B, p. 3, item 13(a), that its application, as amended on March 5, 1992, is short-spaced to Station WTTF-FM, Channel 279B, Tiffin, Ohio. Under Section 73.207, a minimum spacing of 113 km. is required. ASF

proposes use of the former Station WBBY-FM tower site which is located 106.16 km. from Station WTTF-FM. Thus, the short-spacing is 6.84 km.

ORA and another applicant in this proceeding, Westerville Broadcasting Company, Limited Partnership, are fully-spaced to all stations and pending applications,¹ including Station WTTF-FM. Under long-established Commission policy in comparative hearings, when an applicant is short-spaced and at least one other applicant in the proceeding is fully-spaced and no question is raised as to the availability or technical suitability of the fully-spaced site, the short-spaced applicant must be denied. That applicant will not be designated for hearing and will be immediately dismissed from the proceeding. Madalina Broadcasting, Inc., 6 FCC Rcd. 2508, 2509, paras. 3-5 (MMB 1991); Valley Radio, 5 FCC Rcd. 4875, 4876, para. 5 (MMB 1990); Donavan Burke, 104 FCC2d 843 (1986). See also, Megamedia, 67 FCC2d 1527 (1978); Clearlake Broadcasting Co., 47 Fed. Reg. 47931 (1982); North Texas Media, Inc. v. FCC, 778 F.2d 28, 34, n. 32 (D.C. Cir. 1985). Accordingly, the application of ASF must be denied and dismissed.

In order to justify its short-spacing, ASF proposes a directional antenna and requests processing under Section 73.215.

¹The proposed tower site for ORA and Westerville Broadcasting Company is located 164.7 km. from Station WPAY-FM, Portsmouth, Ohio. A spacing of 165 km. is required. However, under Section 73.208(c)(8), this distance rounds to 165 km. Thus, under Commission policy, there is no short-spacing.

However, in MM Docket No. 87-121, 4 FCC Rcd. 1681, paras. 2, 5, 26, 30 (1988), the Commission stated that even the liberal provisions of Section 73.215, as to directional antennas, could only be utilized where fully-spaced tower sites are unavailable or had limited suitability.² To hold otherwise, would effectively repeal Section 73.207 and would allow tower sites to be placed anywhere, so long as no actual interference was caused. Lack of interference is not the sole rationale for the minimum spacing requirements for Section 73.207. North Texas Media, Inc. v. FCC, supra, at 33-34, n. 27. These rules are designed to allow licensees flexibility and lee-way to subsequently improve their facilities. Supra, at 31.

Section 73.215 does not eliminate short-spacing, or render it legally irrelevant. This provision only allows short-spaced tower sites in limited situations and only if consistent with the public interest. Section 73.215 states that a short-spaced application filed under this provision may be granted only when the Commission determines that the grant would serve the public interest, convenience, and necessity. No public interest justification can be found if there are fully-spaced tower sites available which are technically suitable. Naguabo Broadcasting Co., 6 FCC Rcd. 4879, para. 5 (1991). The only reason that ASF proposes a short-spaced site is to save money by utilizing an

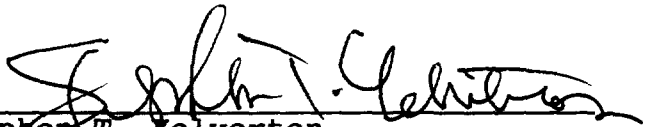
²ASF does not request processing under Section 73.213. Even if it did, Section 73.213(c)(2) requires a showing of the unavailability of suitable and fully-spaced tower sites.

existing tower site. This is not a public interest justification, only a private economic interest of ASF.

WHEREFORE, in view of the foregoing, ORA requests that the Commission deny and dismiss the application of ASF. In the alternative, a short-spacing issue must be designated against its application.

Respectfully submitted,

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March 26, 1992
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CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 26th day of March, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Petition to Deny and Dismiss the Application of ASF Broadcasting Corp." to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

James A. Koerner, Esquire